IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 888 OF 2004

Amir A. Sabuwala ... Petitioner

Vs.

Maharashtra State Financial
Corporation and other ... Respondents

Mr. Saikumar Pathrudu M. for Petitioner.

Mr. M.P. Rege i/by H.P. Rege & Co. for Respondents.

CORAM : F.I. REBELLO &
S.P. KUKDAY,JJ.
DATED : MAY 02, 2005

P.C.

. The industrial establishment belonging to Petitioners was put to auction and sold in September, 2001. The present petition was filed on 3.2.2004. Relief sought is to challenge the sale in favour of Respondent No. 2. A loan was sanctioned in the sum of Rs. 2 crores out of which Rs. 1.79 cores was disbursed in favour of the Petitioners. There is a morotorium period of two years which expired in the year 1999. As the Petitioner was in default of installment, respondent corporation exercised their right under Section 29 of the State Financial Corporation Act. In the auction held, one Graphic Communication India Pvt. Ltd. was the bidder in the sum of Rs.

1 crore. That bid was accepted. The sale however, was in favour of Respondent No. 2 for the same amount.

. On behalf of the petitioner, learned counsel contends that the sale was not in terms of the law laid down by the Apex Court in the case of Mahesh Chandra Vs. Regional Manager, U.P. Financial Corporation and Ors. AIR 1993 S.C. 935. It is further submitted that the value of the property was Rs.4 Crores and the property has been sold for much lessor amount of Rs. 1 crore in violation of the guidelines. Apart from that other assets belonging to the Petitioner have also been sold.

. On behalf of Respondent No. 1 their learned counsel points out that the property was sold pursuant to the auction. The property was advertised and only the highest bid was accepted. The bidder requested that the sale be done in the name of Respondent No. 2 and as such the issue of property has been transferred in the name of actual bidder. The sale was done in the name of respondent No. 2. the amount was the same nearly Rs. 1 crore.

. It is further pointed out that the judgment in

Mahesh Chandra (supra) has thereafter been explained by the Apex Court in Haryana Financial Corporation and anr. V/s. M/s. Jagadamba Oil Mills and anr. 2003(4) ALL M.R. 808. It is therefore, submitted that there has been no illegality committed by Respondent No. 1 in proceeding with sale. In fact the Petitioners in terms of the correspondence on record was called upon to bring purchasers, if they had. That was not done. Apart from that it is pointed out that the Petitioner has come to this court after nearly two and half years after third party rights have been created and as such it is not possible to unsettle the rights created in favour of respondent No. 2.

. The learned counsel for the Petitioner also relied in the judgement of the Apex Court in the case of M/s.Swastic Automobiles and Ors. Vs. Bihar State Financial Corporation and Ors. AIR 1989 S.C. 1551.

. After hearing learned counsel for the Parties, we are of the view that it was open to respondent No. 1 to sell the mortgaged property in terms of section 29 of the State Financial Corporation Act. The contention of the Petitioners that the property

was under-valued perhaps could have been considered if the Petitioner had come to the court immediately after the sale had taken place. The Petitioner has approached this court only in February, 2004. The property by then had long since been conveyed in favour of respondent No. 2. It is therefore, not possible for this court at this belated stage to consider the said contention.

. In so far as sale in favour of respondent No. 2, we also did not find much merit in the said contention. Ultimately the amount paid is the same. This contention could have been considered if the property has been transferred to respondent No. 2 for a lesser amount. That is not so. Apart from that as pointed out on behalf of Respondent No.1 by the learned counsel, the sale in favour of respondent No. 2 was at the instance of the highest bidder who had requested that the property be transferred in the name of respondent No. 2. We therefore, find no illegality in the auction held.

. We do not find that the respondent No. 1 has violated any of the guidelines as set out in Mahesh Chandra (supra). The sale is in terms of the law as explained by the Supreme Court in the case of

Haryana Financial Corporation (supra).

. We, therefore, do not find merit in this petition. If the Petitioners call upon the respondents to furnish the accounts, on such application, respondent no. 1 to furnish the petitioners the statement within fifteen days of such application.

(F.I. REBELLO,J.)

(S.P. KUKDAY,J.)